XI HC-22

06/11/07

(29)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.No. 553/05 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

SB: HON'BLE SHRI DHIRENDRA MISHRA,J.

APPELLANT

1. Mohammad Akbar, Son of Mustak Khan, aged about 22-23 years, Occupation- Sumo Driver, R/o- Behind Pandari Sabji Market, Gandhinagar, near Jayaram Kirana shop, P.S. Civil Line, Raipur (CG)
2. Amit Kumar Dhruv, Son of Deenuram, aged about 22-23 years, Occupation- Taxi Driver, Local Address- Bhatagaon, P.S. Kurudh, Distt. Dhamtari, present Address- Ramesh Kirana shop, near Jyoti STD, Pandari, P.S. Civil Line, Raipur (CG)

VERSUS

RESPONDENT State of Chhattisgarh

2-11-2007

Shri Yogeshwar Sharma, Advocate for the appellants.

Shri Sandeep Yadav, Dy. Govt. Advocate for the State.

2. This criminal appeal is directed against the judgment of conviction and order of sentence dated 21st June, 2005 passed in Special Case No. 60/2004 whereby learned Special Court under N.D.P.S. Act, Bastar at Jagdalpur has convicted the appellants under Section 20(b)(ii)C) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short hereinafter referred to as the Act) and sentenced to undergo R.I. for 10 years with a fine of Rs. 1,00,000/-, and in default of payment of fine, to further undergo R.I. for 5 years.

3. The case of the prosecution is that on 14th October, 2004 around 5.15 a.m., the Assistant Sub Inspector Mohan Patel received a secret information that cannabis is being transported by Ambassador Car from Sukma Jagdalpur via Keshlur. After recording

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the information and further recording the satisfaction to proceed for investigation without obtaining necessary warrant, the Investigating Officer proceeded to Parpa Naka, started checking all the vehicles and around 10.00 a.m. while Ambassador car in which the appellants were present and the appellant No. 1 Mohammad Akbar was driving the care, was intercepted. After observing the procedure prescribed by the Act, the vehicle was searched after obtaining consent from the accused persons and in the said vehicle 4 bags inside the car and 3 bags inside the dickey containing cannabis like substance were seized and recovery memo was prepared. On preliminary test, the seized article was found to be cannabis. Weighment was done and it was found that the bags contain 35 kg and 400 gm of cannabis. 7 samples of 50 gm were taken out from each bag and after making homogenous mixture, they were separated into 25 gm and thus 14 packets of sample were prepared. The seized articles were given for safe custody in the Malkhana. After recording F.I.R. both the accused persons were arrested. The information about the offence was given to superior officers and the samples were sent for medical examination through the Superintendent of Police, Jagdalpur to F.S.L., Raipur who confirmed vide report of Ex. P-1 that the sample was of cannabis. After completing the investigation, charge sheet was filed.

4. During trial, 7 witnesses were examined, thereafter statement of accused was recorded in which they denied the evidence available against them in the prosecution case and further pleaded that they

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were standing in the bus stand of Jagdalpur and enquiring about a bus for Telimarenga when they were apprehended by police and took to the police station and their signatures were obtained in various papers and they have been falsely implicated and no cannabis was in fact seized from them.

5. Learned counsel for the appellant submits that the prosecution witness No. 3 Gangaram who is the witness of Panchnama, recovery memo, seizure memo and other documents prepared during investigation has stated that he was informed by the police around 7.30 to 9.30 a.m. that some persons are going with cannabis however, they have signed the secret information memo of Ex. P-2 which is shown to be prepared at 5.45 am. There is no evidence that the seal by which the contraband and samples were sealed were sent to F.S.L., Raipur as per Section 55 of the Act. The recovery memo of Ex. P-2 mentions that the contraband was seized from the custody of both the accused persons which is not possible as seizure can be affected only from one individual. Thus there is total non-compliance of mandatory provision of Section 55 of the Act. In the notice under Section 50 of the Act, appellants were not apprised of their right that they can be searched before a Magistrate or gazetted officer.

6. On the other hand, learned counsel for the State has supported the impugned judgment.

7. Conviction of the appellant is based on the statement of the Investigating Officer P.W. Mohan Patel, Asstt. Sub Inspector who has deposed the steps taken by him after receiving secret information

XI HC-22

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	that cannabis is being transported by an Ambassador car, he recorded the same and also recorded his satisfaction for not obtaining warrant as the accused persons may flee with the contraband if he waists time in obtaining the warrant and he proceeded for Parpa Naka and searched every vehicle passing through Parpa Naka and around 10.00 a.m. he stopped the ambassador car in which the present appellants were traveling. On interrogation, they told their names and thereafter they were given notice under Section 50 of the Act and after obtaining their consent they were searched, however nothing incriminating was found on their persons and thereafter the vehicle was searched and in the said vehicle the contraband was seized which was found to be cannabis on preliminary investigation. After taking out the sample from the bags, the same were duly sealed and thereafter the weighment was done vide Ex.P-5. The seal used for sealing was also seized from Seal Panchnama of Ex. P-12. The total investigation was done in presence of witnesses Bholaram and Gangaram. All the documents prepared during investigation bear their signatures. P.W. 3 Gangaram has also stated that he was apprised by the police persons that a vehicle carrying cannabis is likely to pass and when an ambassador car passed from Parpa Naka, it was stopped by the police and from the said vehicle, 7 bags of cannabis from the dickey and rear seat were recovered. So far as the contention of the appellant that there is discrepancy of time is concerned that this witness has stated that he was apprised by the police at 7.00 am whereas the secret information	

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

33

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मामला क्रमांक CR. A. NO. 553/05 सन् 200

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memo mentions time of 5.25 a.m., merely on basis of discrepancy on the statement of this witness and that of the investigation officer, the whole investigation cannot be thrown out. It is the case of the prosecution that the contraband was seized from the Ambassador car and the appellants were occupants of that car. The version of the I.O. in this regard is duly corroborated by P.W. 3 Gangaram and in their cross-examination, the defence has not been able to elicit anything which makes their version untrustworthy or unreliable. The impression of the seal is present in the recovery memo as also on seizure memo, the Investigating Officer has stated in his deposition that after drawing the samples from contraband, the same were sealed and the seal by which the samples were sealed was also seized, the F.S.L. report also mentions that the samples were sealed with the same seal which was seized during investigation. Thus from the evidence of P.W. 6 the Investigating Officer, it is established that the appellants were in conscious possession of the contraband which was seized from the Ambassador car in which the appellants were traveling.

8. In the result, the appeal being devoid of merit is liable to be and is hereby dismissed.

Sd/-
Dhirendra Mishra
Judge

S/-

पीछे देखें